
LANDLORD-TENANT

Question: Which party is responsible for repairs to the furnace and hot water heater when the seller remains in possession after closing under a post-closing rental agreement?

Answer: Under the Residential Landlord-Tenant Act, the *landlord* is required to "[m]aintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order." RCW 59.18.060. However, paragraph 5 of our Post-Closing Rental Agreement (JLS Form No. 020) provides that the *seller* is responsible for all repairs to the property during the seller's possession. Therefore, if our form (or another form containing a similar provision) was used, then the seller is responsible; if not, then the purchaser is responsible.

Question: Can a tenant insist upon being present during showings and can we put a keybox on the house without the tenant's permission?

Answer: Under the Residential Landlord-Tenant Act, "The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants." RCW 59.18.150. So long as agents give the tenant at least one day's notice of intent to show, the tenant cannot insist that the home be shown only when the tenant is present, unless unusual circumstances exist that would make such a requirement reasonable (e.g. the tenant owns a Bengal tiger). We probably do *not* have the right to install a keybox without the tenant's permission.

Question: Can a landlord require a nonrefundable deposit from a tenant?

Answer: Under the Landlord-Tenant Act, a landlord may collect nonrefundable fees, but such fees cannot be characterized as "deposits."
RCW 59.18.285 provides that:

"No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable."

A "nonrefundable deposit" is contrary to public policy and is unenforceable. Therefore, the deposits are refundable, must be held in a separate trust account and must be transferred to the buyers.

Advise the landlord to consult its attorney before taking any further action, because the law provides for attorney's fees and double damages for wrongfully withheld security deposits.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.